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Follow-up to the outcome of the Millennium Summit

Letter dated 7 October 2005 from the Permanent Representative of Venezuela (Bolivarian Republic of) to the United Nations addressed to the President of the General Assembly

On the afternoon of 13 September 2005, the United Nations General Assembly was convened, under the presidency of Ambassador Jean Ping, to adopt a draft resolution, dated 13 September 2005, concerning the reform of the United Nations (reissued on 20 September 2005 "for technical reasons"), for submission to the heads of State and Government of the States Members of the United Nations at the High-level Plenary Meeting on 16 September 2005. The document supposedly encompassed the positions of the 191 Member States and was intended to conclude the fifty-ninth session of the General Assembly, which opened on 14 September 2004.

The draft resolution was circulated in English only to the delegations in the Hall approximately five to ten minutes before its adoption "by consensus". This meant that we all barely had time to take a quick look at the document before the President issued his peremptory decision on its content. In fact, hardly had the delegations received the document, and with no opportunity for consultations on its content, to the amazement and dismay of the majority, mixed with applause from others, the President of the Assembly banged his gavel and declared the resolution adopted "by consensus".

Immediately after this unexpected occurrence, which took us all by surprise, the Minister for Foreign Affairs of the Bolivarian Republic of Venezuela requested the floor and delivered the following statement:

> "The delegation of Venezuela has been truly astonished at the surprising manner in which a document of 34 pages — provided only in English, thereby making it impossible to familiarize oneself with its contents in any other

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language — has been adopted. It would seem physically impossible to adopt such a text, especially given that it was circulated solely among a small clique of — as I understand it — 15 persons, and among an even smaller group today.

I have been fortunate enough to have taken speed-reading courses — but not 'instant' reading courses that would enable me, in such a brief span, to acquaint myself with every point. We may well have agreed with many of those points. But it is also very likely that we might have been in complete disagreement with others.

There was not even an opportunity to make any sort of proposal or to disagree with any of the content of those 34 voluminous pages. Moreover, the procedure under which this has been done flagrantly violated the most basic tenets governing democratic processes. Let us not forget that many countries are represented in the Organization. They, in turn, represent billions of human beings, to whom we must be accountable precisely because we hold their fate in our hands. For us to be unaware of what is being adopted here would mean compounding the lack of general awareness about decisions with an impact on vital areas of people's lives.

Given the way that this document — which remained completely unknown to us until this very moment — has been adopted, the delegation of the Bolivarian Republic of Venezuela is obliged to reserve judgement on it. I understand that we are not alone in that regard. I am convinced that many other countries are in a situation similar to Venezuela's. For I find it hard — not to say impossible — to believe that the countries that were not part of the select group with an opportunity to familiarize themselves with and discuss the document, or to propose, bracket, delete and add language to it in fact had sufficient time to pass judgement on it.

At a time when there is so much preaching about democratic principles, it is truly regrettable that an Organization that should be a world paragon of democratic practice should be setting such a sorry and sad example of the complete refutation of democratic procedure.

Like many others, the delegation of Venezuela was excluded from this process. It is therefore absolutely impossible for us to be part of the shameful adoption of something that we know nothing about. We therefore reserve our position. We hope that this does not become the Organization's practice in the future, for that would completely undermine the prestige and credibility of the Organization in the eyes of the billions of thinking and feeling human beings throughout the world who were not part of the group privileged and lucky enough to take part in the drafting and adoption of this document."

On the afternoon of 15 September 2005, the President of the Bolivarian Republic of Venezuela addressed the High-level Plenary Meeting of the General Assembly at its sixtieth session, in the following terms:

"Today, more than ever, we need a new international order. Let us remember that the General Assembly, at its sixth special session, held in 1974 — some in this Hall had not even been born or were just toddlers, I am sure — 31 years ago, adopted the Declaration and Programme of Action on the Establishment of a New International Economic Order (resolutions 3201 (S-VI) and 3202 (S-VI)). In addition, the Assembly adopted on 14 December

of that same year, 1974, the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)), which defined the new international economic order, and which was adopted by an overwhelming majority of 120 in favour to 6 against, with 10 abstentions.

That was at a time when we voted in the United Nations, because now there is no voting: now we adopt documents, such as this outcome document that on behalf of Venezuela I denounce as illegal, null and void. It was approved in violation of the rules of the United Nations. This document is not a valid document. We will have to discuss this document. The Government of Venezuela is going to make this document known to the world. But we cannot accept open and brazen dictatorship in the United Nations. These matters must be discussed; and that is why I respectfully appeal to my fellow heads of State or Government.

I just met with President Néstor Kirchner of Argentina, and I pulled out the document. This document was delivered to our delegates at five minutes' notice, in English only. And it was approved with a dictator's hammer. I denounce it before the world; it is illegitimate, null and void. If we are going to accept this, then we are lost. Let us just turn off the lights and close the doors and windows. The last thing we should do is to accept dictatorship here in this Hall.

As I was saying, now more than ever we need to take up again what we have left unfinished, including the proposal adopted by this Assembly in 1974 for a new international economic order. Article 2 of the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)) confirms the right of States to nationalize any property or natural resources in the hands of foreign investors, and proposes the creation of cartels of raw-material producers. In resolution 3201 (S-VI) of May 1974 the Assembly expressed its determination to 'work urgently for the establishment of a new international economic order based on equity, sovereign equality, interdependence, common interest and cooperation among all States, irrespective of their economic and social systems'. This order would 'correct inequalities and redress existing injustices ... between the developed and the developing countries and ensue steadily accelerating economic development and peace and justice for present and future generations'.

The aim of the new international economic order was to change the old economic order established at Bretton Woods.

I think that the President of the United States spoke for 20 minutes here yesterday, according to what I have been told. So I would ask the Assembly's indulgence so that I can finish my statement.

The aim of the new international economic order was to change the old economic order established at Bretton Woods in 1944, which was to remain in effect until 1971 and the collapse of the international monetary system. Just good intentions, but no will to follow through. However, we feel that it is still the path to be followed.

Today the people, and in this case, the people of Venezuela, are calling for a new international economic order. But we also need a new international political order. We cannot allow a handful of countries to attempt to reinterpret

with impunity the principles of international law in order to introduce a doctrine such as preventive war — it is enough that they threaten us with preventive war — and the so-called responsibility to protect. We need to ask ourselves, who is going to protect us and how are they going to protect us?

I think that one of the peoples requiring protection is the people of the United States, as has been painfully evident during the tragedy of Hurricane Katrina. They do not have a government that protects them from natural disasters that are foreseen, if we are talking about protecting each other. These are very dangerous concepts smacking of imperialism and interventionism and trying to legalize lack of respect for the sovereignty of peoples. The principles of international law and the United Nations Charter should be the cornerstone of international relations in today's world and the basis of the new international order that we are proposing."

On 16 September 2005, Ambassador Jan Eliasson, newly elected President of the General Assembly, presided over a meeting convened to submit a document in the form of a draft resolution (A/60/L.1), the content of which was essentially the same as document A/59/L.70 that the Assembly had supposedly adopted on 13 September 2005. The new draft resolution, dated 14 September 2005, was distributed the same day in the official languages of the United Nations to the heads of State and Government of the States attending the High-level Plenary Meeting of the General Assembly, although the latest official text was dated 20 September 2005, with a comment to the effect that it had been "reissued for technical reasons". At that session of the High-level Plenary Meeting of the General Assembly, the President declared the draft resolution in question adopted "by consensus".

However, on the same day, 16 September 2005, before the President of the General Assembly could declare the supposed adoption of the draft resolution, at the request of the Government of the Bolivarian Republic of Venezuela, the Minister for Foreign Affairs, Mr. Ali Rodríguez Araque, addressed the General Assembly as follows:

"These have been bright, warm days in New York. In contrast, however, the decision with regard to the outcome document, which may very possibly be endorsed in the next few minutes, will be a rather grim one. It was conceived in darkness and brought forth from the shadows to be approved here, in violation of the basic democratic processes governing the practice of sound democracy in the world.

This process did in fact begin with a wide-ranging debate that aroused the hope that, given the scope of that debate and the consultations that occurred initially, it would also be possible for there to be a broad and informed discussion that enjoyed the measured agreement of the Assembly.

But then the analysis and preparation of the document was restricted to a small group of 32 persons, and subsequently to an even smaller group of 15 persons. It is my understanding that, in the end, many comments made from various quarters were put aside by an even smaller group. In the reservation that I was obliged to express on behalf of the delegation of the Bolivarian Republic of Venezuela at the fifty-ninth session, I indicated that the procedure followed was so grotesque that it did not even allow us an opportunity to

express an opinion in favour of the aspect of the draft document with which we agreed. For the delegation of Venezuela, and the vast majority of delegations represented at the Assembly, there was absolutely no possibility to express the opinions that had been consistently voiced during the deliberations in which we were invited to participate as sovereign countries. As sovereign countries we have exactly the same rights as every other country in the General Assembly. Moreover, in view of all the document's shortcomings, we could have left it pending, rather than considering it concluded as is now being attempted, and continue the debate in order to enrich and improve it in the course of the sixtieth session of the General Assembly.

Instead of doing that and promoting a democratic and productive discussion, it was decided from the beginning to bring the document here. And it will now be insisted that we adopt a document that contains parts, which I will shortly enumerate, that will have serious consequences for a great majority of the nations that are represented in the Assembly. In the words of a well-known Venezuelan politician, the Assembly will almost certainly adopt that document under duress while holding its nose. It seems evident that the ends have been a pretext, if not a justification, for the abhorrent and anti-democratic means that have been utilized. This is a very grave precedent. Nothing good awaits the Organization if it engages in such practices. I shall be brief, as time does not permit me to speak for as long as the situation deserves. But I should like to cite some of the omissions, as well as some of the issues included, in the document that should merit a very broad-ranging, careful and in-depth debate in the Assembly.

With regard to terrorism, the document makes no reference whatever to a fact that consistently impairs the sovereignty of weak countries; namely, State terrorism. It would seem that acts of terrorism, as condemnable as they are, are only condemnable if they are carried out by individuals or organizations. It is as though there were no real proven danger of State terrorism. The document makes no distinction between terrorist acts and the legitimate action of peoples to protect their sovereignty. This is an attempt to tie the hands of peoples that cherish their sovereignty and independence and want to fight in defence of those inalienable principles.

The document establishes a Peacebuilding Commission. Who will be the members of the Organizational Committee charged with establishing that body? They will be the Security Council, financial institutions and the main contributors to the Organization. One can therefore already foresee the establishment of a veritable monopoly and dictatorial control over the exercise of the Commission's functions. The document also refers to two interrelated matters; namely, the so-called responsibility to protect and the Human Rights Council.

A reading of the pertinent paragraphs in the document immediately raises the question of who is in a position to send troops many thousands of miles away. Who has the financial resources, weapons and logistics to carry out actions to protect, especially given that, as I have emphasized, the concept of responsibility to protect is related to the Human Rights Council? In that connection, I would propose for discussion that countries that have not ratified international human rights conventions should not be part of the Human Rights

Council. For it is truly inconceivable that States that have not ratified such conventions should have any influence in the area of human rights.

The document also sets up a Democracy Fund. How will it be administered? How large will it be? Apart from the very generic term used to describe it, what are to be its objectives? We in Venezuela have some experience with the promotion of democracy being used as a pretext. There has been brazen interference in the internal affairs of our country, including the financing of groups that, in the guise of operating as non-governmental organizations, have acted as political parties and have even taken part in violent acts against the State of Venezuela. That included such clearly illegal acts as the coup of April 2002, which, together with the oil coup, caused losses to Venezuela of approximately $20 billion in 2002 alone.

The document makes absolutely no reference to one of the worst threats to humankind's future or to the universal and profoundly human yearning for comprehensive and unconditional nuclear disarmament. Today the major Powers possess weapons of mass destruction capable of destroying all life on the planet many times over. And yet there is not even the most tepid, faint or remote reference to that very heartfelt desire on the part of the vast majority of the world's people.

Far from contributing to the strengthening of the General Assembly, as the most basic principle and fundamental exercise of democracy would suggest, the general trend is to restrict the competence of the Assembly and to increasingly concentrate power in small groups, such as the one to which I have just referred: the Human Rights Council, the Peacebuilding Commission and the Democracy Fund. In short, this represents an increasing and ever-more-dangerous curtailment of the exercise of democracy in the General Assembly, which is the essential precondition for the actual empowerment that the General Assembly should enjoy.

And as if that were not enough, this meeting, which was convened to draw up a balance sheet of the Millennium Development Goals, will not have enabled us to leave the Assembly and return to our countries with a clear picture of the situation vis-à-vis the obligations and commitments made.

I reiterate that there is no reference to the Millennium Development Goals, the main reason for this meeting. Before I finish, I would like to make clear the position I have taken on behalf of the Bolivarian Republic of Venezuela."

The President of the General Assembly, Ambassador Jan Eliasson, then convened a meeting of the General Committee on 27 September 2005 for an informal exchange of views on the document concerning the reform of the United Nations, which had been supposedly adopted by the General Assembly. At this meeting, he said that, following the adoption of the document, the main tasks of the General Assembly would be to implement the decisions contained in the document. At that meeting, we stated for the record that the Bolivarian Republic of Venezuela considered the so-called document on the reform of the United Nations to be absurd and null and void as far as our country was concerned, but that we were willing to participate in negotiations in the General Assembly on the reform in the immediate

future, and that the document could serve as a starting point or a minimal basis for the forthcoming negotiations.

Also, on 29 September 2005, in our remarks on the report of the Secretary-General on the work of the Organization (A/60/1), we stated the following:

> "We would like to confirm our country's support for and cooperation in the United Nations efforts and work. The future of the Organization now faces a grave threat regarding its reform, owing basically to the intentions of those who have conceived it as an instrument that exclusively serves the interests of the United States and its allies, as a component of the new neo-colonial order they wish to install for the redistribution of markets and areas of influence. They aspire to return to imperial hegemony through institutional multilateralism that lacks any real content, ignoring and exploiting peoples and exacerbating global imbalances by inventing new mechanisms for undermining and interfering in the sovereignty of Member States and strengthening the Security Council, on the pretext of fighting terrorism.
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> Venezuela believes in the United Nations as a central, democratic Organization in a democratic international society, based on economic and social development and multilateralism as an instrument and framework for fashioning a multipolar, interdependent, mutually supportive and peaceful world. Our main line of action is the promotion of international cooperation in order to strengthen South-South cooperation for the prime purpose of eradicating poverty and social exclusion which hinder the self-determination of our peoples and pose a grave threat to the democratic stability of States.
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> Venezuela is convinced that these goals can only be achieved through specific economic and social policies of inclusion and empowerment of peoples; through shrewd, democratic governance combined with a people that participates actively in all collective policymaking; through massive mobilization of resources for development; through agreement among developing countries, and joint action with the more developed countries, which bear most of the responsibility for creating a new world in which the priority is economic progress and social justice. A new, just and humane world order must be premised on the adoption of measures to eradicate poverty and redress age-old injustice. Nothing could be further from this purpose than the depressing picture of the reform of the United Nations and the outcome of its call for us to embark upon the lofty and humanitarian task to which we have all committed ourselves. We refer to the outcome document, which has been flawed by the violation of the universal rule of due process. We once more reiterate the reservation expressed by the President of the Bolivarian Republic of Venezuela in this very Hall to the effect that the document is null and void as far as our country is concerned.
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> The report that has been presented reflects the distressing situation of the planet and, especially of this universal Organization par excellence, which is called upon to respect the fundamental values of its Charter while constantly being threatened by actions that are gradually annihilating human beings and the live species, seas, waters and productive lands sustaining their existence. These actions seem to be hurling us towards our own destruction, without any hope of a reversal in direction. Regrettably, we face with great sadness a

United Nations that has become submissive and complacent, applauding its own disgrace and deterioration.

In the fight against poverty, Venezuela's efforts have been substantial, as any observer without prejudiced views can see, despite the unpatriotic, subversive actions that have been threatening our democratic stability since 2002; and we continue to face such threats from non-governmental organizations financially supported and assisted by the Government of the United States of America.

On this matter, the Bolivarian Republic of Venezuela wishes to stress that we do not agree with the methodology followed in this report or with the way that the indicators and statistical variables were handled in the assessment of the Millennium Development Goals. We do not share the views, either in form or in substance, of the report of the Secretary-General on the work of the Organization. We also disagree with the use of indicators based on the dollar, since this method does not give us a clear idea about the implementation of public policies that offer a comprehensive treatment of the issue. There is no way to measure the impact of social programmes, specifically the Social Missions, and the role they play in sustainable, human, integral and endogenous development and their contribution to attaining the Millennium Development Goals. We reject the statistical treatment and methodological perspective because they do not take into account the specific, concrete socio-political realities in Venezuela and other countries. In our case, the series of events that have affected our country since December 2001, including the coup d'etat in April 2002 and the oil strike in 2003, constitute a fundamental factor in the positive results we have achieved in our fulfilment of the Millennium Development Goals. In this respect, allow us to make a comparison with the Asian situation after the tsunami. We suspect that the Economic Commission for Asia and the South Pacific, in its next report, will have to allude to this historical reality, which will necessarily hinder and have a profound impact on the social and economic growth of the affected countries. In our case, what happened in our country during the period 2002 to 2003 has had devastating consequences similar to those of a tsunami.

Finally, we should like to say that the proposal to establish a new Human Rights Council based on a simplistic transition from the Commission on Human Rights will not resolve the existing problems. We do not face a problem of semantics or of a given name, structure and procedures. Any proposal of reform within the Commission on Human Rights must be oriented towards formulating deep political changes and enlarging its membership."

On 30 September 2005, we received a letter from the President of the General Assembly, and on 3 October 2005 we replied as follows:

"With reference to your note No. 9948 of 30 September 2005, making a proposal for the implementation and follow-up of the 2005 World Summit Outcome (draft resolution A/60/L.1), I should like to reiterate that we made a reservation on the above-mentioned document because we consider it null, void and without any effect.

Our position is based on our disagreement with the procedure followed during its negotiation and the methods used for its adoption, which contravene

the major provisions of the Charter of the United Nations and the rules of procedure of the General Assembly.

With regard to the serious facts that affect this resolution, supposedly adopted at the 2005 World Summit, this Permanent Mission has submitted the above-mentioned document to the Venezuelan Ministry of Foreign Affairs, and we are still awaiting instructions on this matter. We should like to take this opportunity, however, to make it clear that we remain willing to actively participate in the upcoming negotiations, in the understanding that this document will only serve as a starting point or a minimal basis for our forthcoming deliberations. We consider it as a working paper, not as a valid decision to be implemented in the near future."

We should like to take this opportunity to recall that the Bolivarian Republic of Venezuela has been elected Vice-President of the General Assembly for its current session. That means that our responsibilities and powers include sharing with you the task of guiding the General Assembly in its work. That imposes on us an obligation, among others, to ensure that the accomplishments of this the supreme body of the United Nations, which is by its very nature deliberative, legislative and democratic, and its discussions and decisions, even if mere recommendations, are first considered and then adopted in accordance with political criteria which are comprehensive, inclusive, transparent, in good faith, balanced, effective, and also strictly respectful of legality. The same holds true for the principles and standards applicable to those deliberations and decisions and contained in our founding constitution, the Charter of the United Nations, which is universal in scope, as well as in the procedural guidelines set out in the rules of procedure of the General Assembly. Our resolve to exercise the rights inherent to our position is further strengthened if we consider that the decisions of the General Assembly, in this and other cases, apparently could involve the establishment of a mandate which would impose obligations on Member States and entail the implementation or execution of the "decisions" adopted by the General Assembly as a logical conclusion to the negotiations which had preceded those decisions.

In performing the role and duties noted above it behoves us as Vice-President of this Assembly, rightly determined to ensure that the General Assembly acts during this session with due respect for the applicable standards, to suggest that both the procedure which led to the supposed approved text of draft resolutions A/59/L.70 and A/60/L.1 and the supposed adoption of both resolutions, based on a false or fictitious consensus, show such glaring and significant errors that they bring into question the validity and legitimacy of the entire process surrounding those discussions and decisions from both a juridical and a political perspective.

The discussions which began on 27 August 2005 were juridically illegal and politically illegitimate by virtue of the fact that they were held outside the context of the Assembly and were restricted to a group of Member States, initially approximately 30, later reduced to 15 and finally approximately 6, members of a clique hand-picked by the former President of the General Assembly, Ambassador Jean Ping, who authored the final draft of the document on the reform of the United Nations submitted to the General Assembly for consideration at the last meeting of its fifty-ninth session on 13 September 2005 and later submitted, furthermore, with some modifications, to the heads of State and of Government of the States Members of the United Nations at the plenary meeting of 16 September 2005. That

anti-democratic act, carried out in violation of the Charter of the United Nations, when the General Assembly had barely begun its session, was denounced by the Bolivarian Republic of Venezuela in a document dated 30 August 2005 and circulated to delegations, the text of which follows:

> "The Permanent Mission of the Bolivarian Republic of Venezuela to the United Nations feels obliged to bring to the attention of the public, given their seriousness, recent events at the United Nations which bring into question the methods, processes and decisions surrounding the elaboration of the draft document to be submitted by the General Assembly for approval by the heads of State at the high-level plenary meeting of the General Assembly of the United Nations to be held in New York from 14 to 16 September 2005. That document will supposedly contain Member States' crucial suggestions for reform of the United Nations.
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> The President of the General Assembly, in violation of rules and procedures, is trying to force the adoption of a draft reform of the Organization aimed at transforming it into a multilateral instrument at the service of unilateralism, repression and aggression against the majority of Member States of the General Assembly, reinforcing the powers of the Security Council to the detriment of the General Assembly and creating a new institutional structure in the Organization, thereby exposing the sovereignty and equality of States as well as the right to self-determination to great risk.
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> Beginning on 27 August 2005, the President of the General Assembly, ignoring the principles enshrined in the Charter of the United Nations concerning the equality and sovereignty of States Members of the Organization, arbitrarily established a format or procedure for parallel negotiations within the General Assembly restricted to certain hand-picked States and with a limited agenda, which he imposed against the will of the Member States.
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> As a result of that flawed and therefore illegitimate process, the President of the General Assembly and the handful of States chosen and gathered together by him, acting on their own and without the authorization of the General Assembly as a whole, arbitrarily claimed that the profound disagreements, many unsolvable, raised in the General Assembly with regard to the draft reform of the Organization, had been resolved.
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> A shameful example of those machinations occurred on 29 August 2005 during an informal meeting of the General Assembly at which the President of the General Assembly arbitrarily and disrespectfully, without regard to the principles of the Organization, tried to restrict the right of sovereign States to participate in the Assembly. Thanks to the protestations of the Bolivarian Republic of Venezuela, supported by the Non-Aligned Movement and other delegations, the President was obliged to respect that right.
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> The Bolivarian Republic of Venezuela denounces such fraudulent manoeuvres, which could have unforeseeable consequences for the integrity and future of the Organization."

The events we have just described are absolutely true and do not need to be proved because they were public and common knowledge among the heads of State and Government and the heads of Missions accredited to the United Nations. The

irregularity of those events was confirmed and described as an "error", in a statement not yet denied by the Secretary-General, during a meeting with the President of the Bolivarian Republic of Venezuela, Hugo Chávez Frías, on 16 September 2005 at 6 p.m., which was attended by various individuals from the Office of the Secretary-General and the delegation of the President of the Bolivarian Republic of Venezuela, including three cabinet ministers, a deputy minister and myself, all of whom are irreproachable witnesses to that admission by the Secretary-General. We also maintain that the submission of the draft resolution contained in document A/59/L.70 to the Assembly and its supposed adoption violated articles 51, 56 and 78 of the rules of procedure of the General Assembly.

Those actions render absolutely and irremediably null and void the procedure which led to submission of the draft resolutions and also renders them without effect because the President of the General Assembly and the Member States which supported him, by organizing that illegitimate and unauthorized ad hoc group of negotiators, violated the fundamental and non-derogable constitutional procedures contained in Article 1, paragraph 2, Article 2, paragraph 1, Article 9, paragraph 1, and Article 18, paragraph 1, of the Charter of the United Nations taken together and likewise ignored that universal rule of accepted customary public international law, the right to due process. The first of those documents likewise violated the rules of procedure of the General Assembly which we noted above. These violations, which the Bolivarian Republic of Venezuela denounced as soon as they occurred, on 27 August 2005, make those discussions, held outside the legal and political framework of the General Assembly and which were the basis for the text of the document on the reform of the United Nations, invalid, null and void, illegitimate and without effect. Such irregularities could not, would not and shall not be rectified, corrected or cancelled by any subsequent decision of the Assembly, which, if such should occur, could only be characterized as a political manoeuvre, because the provisions which were violated are an integral part of international *jus cogens*, in other words peremptory rules of general international law or an integral part of the international public regime corresponding to general public international law. By the same token, the rules contained in article 53 of the Vienna Convention on the Law of Treaties of 23 May 1969, which is universal, are applicable under public international treaty law and customary law. Therefore the procedures followed and the results of those procedures to date, in other words the two resolutions, which were supposedly approved by the General Assembly on 13 and 16 September as well as the document on the reform of the United Nations to which those resolutions refer, are all null and void and have no juridical or political effect because they constitute a grave and incontrovertible violation of the political and juridical regime of the United Nations, public international law and general and particular law governing the functioning of the General Assembly of the Organization.

Furthermore, the so-called adoption of draft resolutions A/59/L.70 and A/60/L.1 by the General Assembly on 13 and 16 September respectively, and the document on reform of the United Nations contained therein, have no legal effect or legitimacy. The supposed consensus which is alleged to have occurred or materialized to justify those decisions never existed. Indeed, in his speech to the high-level plenary meeting on 15 September 2005, the President of the Bolivarian Republic of Venezuela clearly, comprehensively, emphatically and assuredly denounced the violations which we have referred to, declared the document as a whole and consequently the resolutions which supposedly had been adopted, null

and void and invalid, stating on behalf of the Republic our absolute refusal to accept them. Our Minister for Foreign Affairs, speaking before the Assembly on the 13th and again on the 16th of September 2005, likewise expressed our reservations about the supposed adoption of the document and of course the two related draft resolutions. Furthermore, as we have noted, Venezuela, through its Mission to the United Nations, as early as 28 August had expressed its concern about the fraud being perpetrated at that time.

Therefore, our stated opposition, expressed categorically and without ambiguity, makes it impossible to speak of any consensus, as was suggested and continues to be suggested. The theory and practice regarding consensus in the United Nations could be understood in the widest context, taking into account the experience of all deliberative bodies, including the specialized conferences, which have generated resolutions, decisions, declarations or multilateral conventions under the auspices of the Organization. There is no criterion which *prima facie* could be called conclusive with regard to that theory and practice. In a book entitled "Procedure at International Conferences: A Study of the Rules of Procedure of International Inter-governmental Conferences", published by Cambridge University Press in 1997, about doctrine and practice at the United Nations, the author, Robbie Sabel, describes the contradictory, ambiguous and ill-defined nature of the doctrine of consensus and seems to imply that there cannot be consensus if a State openly indicates its unequivocal opposition to a resolution or decision of the body in question, including the General Assembly of the United Nations.

The theory and practice in the General Assembly is, generally speaking, as follows: consensus in the sense of total unanimity does not seem to exist; there is a tendency to consider that consensus does not necessarily imply unanimity, or, similarly, there may be a certain degree of disagreement, which does not affect unanimity given that achieving consensus requires a flexible interpretation of that concept in order to come to a general agreement in spite of the fact that all Member States are not in agreement with all the provisions of a declaration, decision or resolution. Accordingly, there is provision for explanation of vote, in cases where States do not want to block the agreed consensus concerning a declaration, decision or resolution of the General Assembly. If certain States agree with the general thrust of the text for a draft document but have a different or a particular interpretation of a paragraph, sentence or concept in the text, their explanation of vote regarding that difference of opinion does not affect the consensus or prevent that State from joining in the consensus. That is an accepted practice which allows for an alternative type of approval which does not require a recorded vote. On the other hand, if a State opposes or rejects a declaration, decision or resolution in its entirety, because it considers the text to be incompatible with its national interests, it is sufficient for that single Member State of the General Assembly to publicly explain and express its complete disavowal of the text to prevent consensus. The case against consensus is made even stronger when there is not only a State which believes that elements of the text are against its national interests, but there are also questions about the substance of the document because of errors of procedure which affect both its juridical validity and its legitimacy. That is precisely the case with resolutions A/59/L.70 and A/60/L.1, the validity of which has been questioned by the Bolivarian Republic of Venezuela. Even if there was supposedly consensus in this case, which we deny, real consensus would be inconceivable because the resolutions in question were not arrived at through the required procedure including

respect for due process and equality of States, essential conditions for the validity of the juridical acts in question. Those documents are therefore undeniably null and void.

The draft resolutions were not approved in a manner which gave them legal effect or legitimacy, in the sense that there was not only no consensus, there was not, nor has there been to date, any follow-up vote which would be required for a resolution about which there was no consensus. Even had there been a vote, it would be impossible to rectify or remedy the inherent inadequacies of the preparatory process for the draft document and resolutions on the reform of the United Nations. That is because, as we said, non-derogable principles of *jus cogens* are in play, peremptory norms of general international law such as those enshrined in the Charter of the United Nations concerning the equality of States, the basic principles for the existence of the international community and an intergovernmental organization such as the United Nations.

Accordingly, those resolutions are not only recommendations with no intrinsic or extrinsic validity, they cannot be considered to be binding and the so-called document on the reform of the United Nations must be considered to be a mere working paper which shall have to be the subject of renewed negotiations, to continue those interrupted on 27 August 2005, negotiations which must return to the point they had reached on that date when the sovereignty of the General Assembly and its Member States was hijacked and the latter were excluded from discussions by the regrettable decision of the President of the General Assembly and the complicity of certain States which lent him their support.

You can understand that the errors which we have noted and which affect the validity of the procedure and the legality or very existence of the adoption of both resolutions cannot be used to justify or deduce any mandate from the General Assembly for the implementation or execution of the decisions contained in the document on the reform of the United Nations. An invalid and null and void act cannot be used to justify a subsequent valid act, especially if that act is irremediably flawed.

The negotiations and discussions announced by you with regard to the document on the reform of the United Nations cannot therefore proceed based on a false and fraudulent premise, that being the approval of the General Assembly which you yourself have asserted exists, without justification. The document on the reform of the United Nations can only be considered useful or valuable as a mere working paper, a work still in progress because the negotiations concerning that document were illegally cut short in violation of the sovereignty of the General Assembly and its Member States.

It is also necessary to re-establish, in the immediate future, the legal order that has been violated. This is one of the functions of the General Assembly, as a collective and sovereign body that has been harmed by the facts we have described here. This task will have to be carried out through a decision declaring the legal order to have been violated and re-establishing the legality, seriousness, responsibility and dignity of the body in question, so that the interrupted negotiations can be resumed at the point where the infractions occurred.

Accordingly, the Bolivarian Republic of Venezuela, in its capacity as Vice-President of the General Assembly, in defence of the legality, good faith, justice,

dignity and accountability of the Assembly and bearing in mind that the only way to strengthen the role of the Assembly is by correcting these irregular practices, hereby requests that you refer this matter to the United Nations Office of Legal Affairs for the purposes of assessing and restoring the legality and legitimacy that have been violated. This consultation should consider the following points:

- Whether or not the procedure followed in the negotiation and adoption of the final outcome document on the reform of the United Nations, submitted to the General Assembly and the high-level plenary meeting (draft resolutions A/59/L.70 and A/60/L.1), was in compliance with the provisions of the Charter of the United Nations, the rules of procedure of the General Assembly and respect for due process, and, likewise, whether or not draft resolution A/59/L.70, released on 13 September 2005, met the requirements of the rules of procedure of the General Assembly;

- If the procedure in question was not in compliance with the above-mentioned rules and norms, what kinds of irregularities adversely affected the deliberative process that resulted in the document on the reform of the United Nations submitted to the General Assembly; what would be the juridical and political consequences of such irregularities, including their character or nature; and how could their impact be remedied?

- Whether it is possible to assert that the draft document on the reform of the United Nations, contained in the above-mentioned draft resolutions, was or was not adopted by consensus, taking into account the explicit and unequivocal condemnation of illegitimacy and disagreement expressed by the Bolivarian Republic of Venezuela, in accordance with the concept and doctrine of the real meaning of consensus as a practice within the General Assembly;

- If the conclusion is that consensus was not reached on the adoption of this document and the relevant resolutions, what would be the value of these documents for the upcoming negotiations that have been announced for the near future?

- Whether or not it is necessary for the General Assembly to issue a statement aimed at rectifying the infringement of its legal order, re-establishing the negotiations that were interrupted and delegitimized beginning on 28 August 2005 and resuming the process at the same point where the negotiations were interrupted.

I should be grateful if you would have the present letter distributed as a document of the General Assembly under agenda items 46 and 120.

(*Signed*) Fermín **Toro Jiménez**
Ambassador
Permanent Representative